MACApp. 46/2001
BEFORE
HON'BLE MR JUSTICE K. SREEDHAR RAO
Heard Sri SK Goswami, learned counsel for the appellant and Sri K Bhatta, learne d counsel for the insurance company.

Appellants are mother and sister of one Nirmal Sarma, who died in a vehicular ac cident. The fact of occurrence of the accident, rash-and-negligence of the drive r of the vehicle involved and the coverage of insurance is not in dispute. The t ribunal has granted compensation for a sum of Rs 1,20,000/-.

Aggrieved by the inadequate compensation the claimants have filed this appeal fo r enhancement of the amount.

Exhibit 6 produced by the claimants before tribunal shows that the basic pay of the deceased is Rs 2,666.00 and dearness allowance Rs 1,868.67. Also produced ha ve been the twelve months' pay slips(January,1997 to December, 1997) issued by t he employer of the deceased ~ Indian Oil Corporation ~, which shows that the dec eased has been drawing the following allowances:

i) FDA(fixed dearness allowance) - Rs 186.00
ii) VDA(variable dearness allowance) - Rs 1,435.41
iii) North-east allowance - Rs 323.88
iv) Shifting allowance - Rs 110.00
v) Special allowance - Rs 259.10
vi) Tea allowance - Rs 60.00
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Rs 2,374.39
Therefore the total pay and allowances: 2666.00+1,868.67+2,374.39 = Rs 6,909.06
Say, Rs 6,900.00

The counsel for the appellant has submitted that the tribunal has erred in taking the total monthly salary as Rs 4,534/-. The income of the deceased sho uld be considered as Rs 6,900/- per month. Fifty percent should be deducted towa rds the personal expenses. Rs 3450/- would enure to the benefit of dependency. M other being aged about 60 years, hence the total loss of dependency would be 345 0x12x9 = Rs 4,00,800/-. The mother would further be entitled to Rs 25,000/- towa rds loss of expectancy and Rs 10,000/- funeral expenses. So, the mother is entit led to a total of Rs 4,35,800/- as against the Rs 1,25,000/- awarded by the trib unal.

It is argued that the deceased was working at the Indian Oil Corporation and thu s his salary has to be considered for assessing the income and also for benefit of dependency. The argument is untenable; because the mother is already 60 years of age, and there is no prospect of the mother being outliving the son in the n ormal course. The provisions in section 1-A of the Fatal Accidents Act, 1855 dec lare that spouse, parent and a child, if any, is entitled to seek damages. The y ounger sister, however, is not entitled to claim compensation under section 1-A of the Act, but would be entitled to seek compensation under section 2 of the Ac t for the loss of estate. When the heirs mentioned in section 1-A are present, t he other legal heirs cannot claim compensation. In the absence of legal heirs un der section 1-A the other legal heirs can seek for loss of estate u/s 2 of the F atal Accidents Act. In that view of the matter the quantum of compensation has t o be decided only from the standpoint of the mother, who is entitled to claim co mpensation under section 1-A of the Fatal Accidents Act, 1855. Any future prospe cts which the son might have got, in the absence of his death, would not go to t he benefit of the mother. Hence the additional income of future prospects cannot be taken into account in determining the compensation payable to the dependant mother.

Accordingly the appeal is partly allowed. The first appellant(mother) is entitled to compensation of Rs 4,35,800/-(Rupees four lac, thirty-five thousand, and eight hundred) as against Rs 1,20,000/- with interest at the rate of 9 percent per annum on the said amount from the date of petition till payment in view of delay in getting the just compensation.

Accordingly the appeal is disposed of.